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CHAPTER ONE

ADMINISTRATION

1-1 ADMINISTRATIVE OVERVIEW

Right of Way functions performed by the Maine Department of Transportation (MDOT) are the means by which real property is acquired for transportation programs and projects. The right of way program is administered to efficiently deliver real property for project construction while treating property owners and occupants fairly and equitably. The Fifth Amendment to the US Constitution provides that private property cannot “be taken for public use without payment of just compensation” to the owner. The Fourteenth Amendment to the US Constitution requires due process of law be accorded to private property owners before the taking of property by the governmental power of eminent domain.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 ***United States Code*** Chapter 61 (***Uniform Act***), as amended, and its implementing regulations (49 ***Code of Federal Regulations*** Part 24) (***CFR***) interpret the legal meaning of the Federal constitutional provisions and define procedures for establishing just compensation and providing due process to property owners. These just compensation and due process requirements apply to all Federally-funded MDOT activities, including those carried out by local public agencies and some private parties. Additional provisions affecting right of way functions appear in Title 23 ***United States Code***, Chapter 1. Article 1, Section 21 of the Maine Constitution and Title 23 of the ***Maine Revised Statutes***, contain state equivalents of the Federal protections.

1-1.01 Purpose and Use of the *Manual*

1-1.01(a) Overview

The construction and operation of transportation projects frequently involve impacts to people who live or own property on or near the project location. There can be a wide variety of impacts, ranging from the loss of a small part of a home’s front yard to the relocation of a family or business to a new site. The Maine Department of Transportation (MDOT) has a legal and ethical duty to insure that it acquires the property interests necessary for its activities, and that the affected individuals are treated fairly. Personnel performing right of way functions are the principal points of contact between MDOT and affected property owners and tenants. Their role is to help avoid and minimize impacts, identify compensable impacts that will occur, and carry out valuation, acquisition and relocation activities in accordance with State and Federal requirements and MDOT policies. This *Right of Way Manual* provides information to guide Department personnel and consultants in performing those crucial tasks. In addition, the *Manual* is a declaration to the public, auditors and the Federal Highway Administration (FHWA) as to how MDOT performs its property acquisition responsibilities.

This *Manual* describes operating procedures for all major right of way functions. These functions include the preparation of right of way plans and title acquisition documents, public information and research, the valuation of property interests, negotiation and acquisition of title, residential and business relocation, property management, contracting procedures and standards, quality assurance/quality control, and various administrative activities. The *Manual* also includes guidance for local public agencies performing right of way functions for transportation projects. Appendices to the *Manual* incorporate important reference material including relevant sections of the ***Maine Revised Statutes Annotated (MRSA)***, and Federal right of way regulations.

All persons with right of way responsibilities, including MDOT personnel, local agency personnel, and consultants should use this *Manual* as a reference tool for basic information about how to carry out right of way assignments. Because the *Manual* cannot address every problem or circumstance that may occur, MDOT expects and encourages personnel to use independent judgment in carrying out their tasks. The Department also encourages personnel to consult with Right of Way Support Managers for clarification of right of way procedures and standards, and for assistance with solving specific right of way issues.

1-1.01(b) *Manual* Updates

The Department will revise this *Manual* as relevant laws, regulations, procedures and practices change. In addition, Federal Highway Administration (FHWA) regulations require MDOT to update the *Manual* and obtain FHWA approval for it every 5 years after the approval date of the *Manual* (23 **CFR** 710.201(2)).

The Right of Way Policy Committee (see Section 1-1.03(a)) is responsible for timely and necessary revisions to the *Right of Way Manual*. This Committee will identify when a modification is needed, coordinate changes with the Bureau of Project Development (Project Development), assign the preparation of new text or other material as appropriate, and submit the revised *Manual* to FHWA for approval on the 5-year cycle. The Department expects Right of Way Support Managers and other personnel involved with right of way activities to notify the Right of Way Policy Committee whenever they believe a revision may be appropriate. The Right of Way Policy Committee will meet annually with the Director of Project Development to discuss the status of the *Manual* and provide necessary updates.

Users can determine the publication date of the *Manual* by looking at the page header for the section in question. Whenever the Department revises a part of the *Manual*, the revision date will appear in the page header.

1-1.02 Department, Bureau and Right of Way Missions

The Department and its organizational units have formal statements that define their purposes and objectives. Personnel performing right of way functions are guided not only by the statements of the Department and Project Development, but also by a mission statement developed by the Right of Way Policy Committee to govern the delivery of right of way services.

The MDOT “Visions and Values” statement (1998) provides the following guidance:

Values: Leadership for innovation, creativity and technology in the continuing development of a balanced transportation system. Quality products and professional service for our customers. Openness, honesty], integrity, and credibility in communications with internal and external customers. Mutual respect and recognition of the contributions that diversity brings to job performance and creativity.

Vision: The Maine Department of Transportation will create and maintain a safe, efficient and economical transportation system that is cost effective, energy efficient, environmentally sound and responsive to the diverse needs of the people of Maine. The Department will create internal and external partnerships and foster teamwork to insure a safe and secure work environment of support, trust and mutual respect. We envision a Department where individuals are highly motivated, are encouraged and recognized for their contributions and diversity, treat each other as customers, inspire each other’s best efforts and provide service of the highest quality.

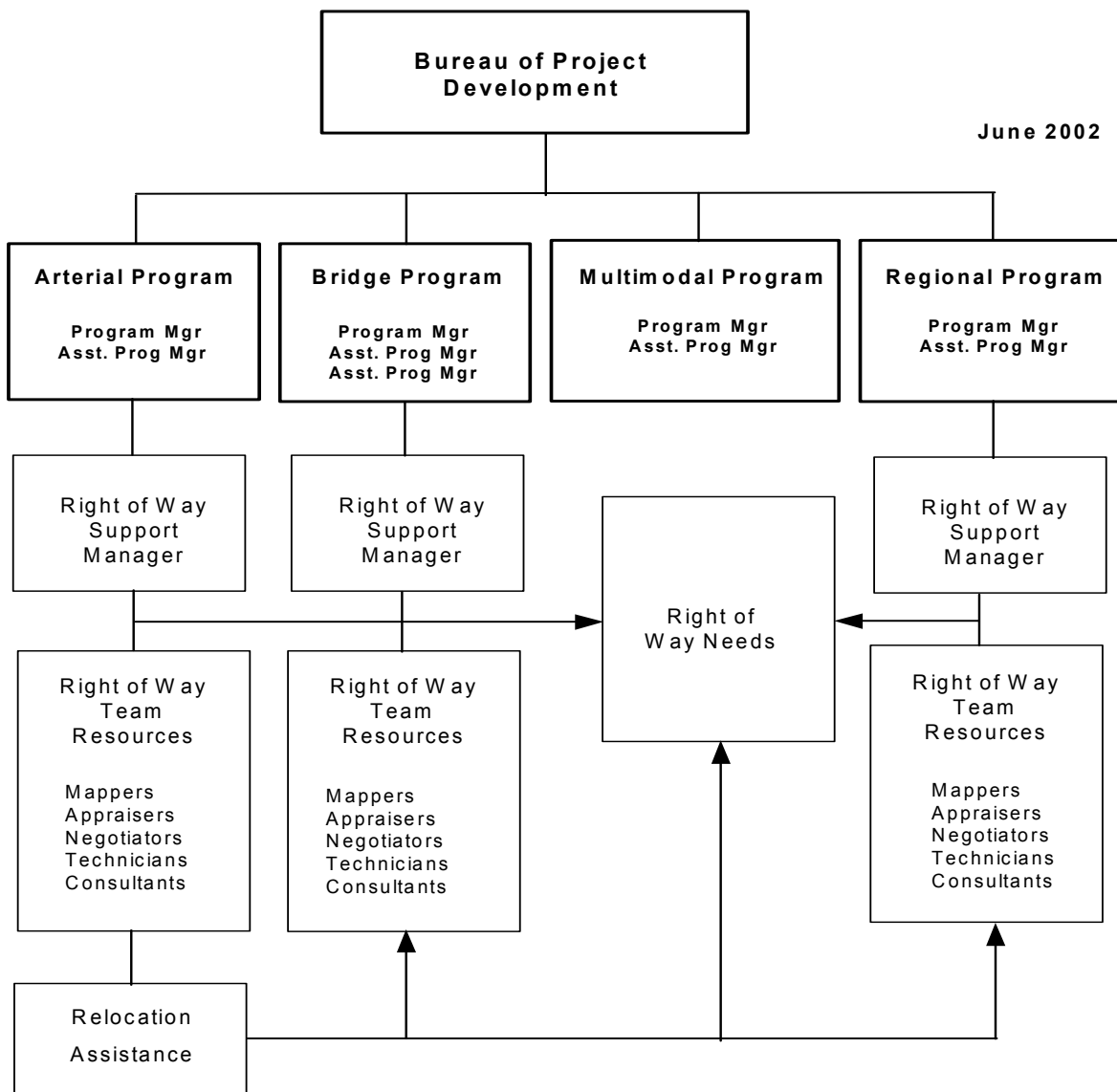
The Project Development charter (1999) describes Project Development’s mission, as well as 17 commitments related to fulfilling that mission. Under the charter, Project Development “delivers safe, cost-effective, quality transportation projects to [its] customers on schedule.” Its commitments address safety, customer satisfaction, continuous improvement, teamwork and principles for the management of projects and programs.

The mission statement developed by the Right of Way Policy Committee takes a more specific approach that reflects the special right of way obligations. The Mission is “to establish, deliver, and manage property interests in support of Maine’s transportation infrastructure in a consistent, timely, and equitable manner, in accordance with state and federal laws.”

Personnel performing right of way functions are expected to know and understand the concepts outlined in these three statements. These concepts reflect a philosophy that should serve as a backdrop for Right of Way Operations team members as they make day-to-day decisions.

1-1.03 Right of Way Organization, Functions and Activities

The right of way function operates within the Department’s Project Development Bureau. The organization chart, Figure 1-1, shows the placement and organizational relationships of Right of Way in the Project Development Bureau.

**FIGURE 1-1 — Bureau of Project Development**

1-1.03(a) Right of Way Policy Committee

Right of Way Support Managers from the Urban/Arterial, Bridge and Regional Programs, together with the Supervisor of Right of Way Mapping and Research, a Principal Real Estate Attorney from the Office of Legal Services and the FHWA Right of Way and Environmental Officer, comprise the Right of Way Policy Committee. The FHWA representative serves in an advisory, nonvoting capacity. The group is responsible for the following functions:

1. Insuring consistency and quality in the performance of right of way activities;
2. Serving as an interface between MDOT and FHWA, as well as the American Association of State Highway and Transportation Officials (AASHTO), on right of way issues;
3. Developing and revising MDOT Right of Way policy, including revisions to this *Manual*;
4. Determining core training and experience requirements for Right of Way professionals at MDOT; and
5. Guiding the Programs in the delivery of LPA-administered projects.

1-1.03(b) Objectives of Right of Way Functions

The overall objective of right of way activities is to help achieve the best balance possible among the competing needs of public transportation facilities and adjacent property owners and tenants. The role of Right of Way Operations team members in recognizing and addressing potential project impacts on people and property begins at the earliest planning stage for a project. That role continues through design, construction, and sometimes operation, of the project. Many right of way activities are shaped by the need to satisfy the requirements of the 5th and 14th Amendments to the U.S. Constitution, and Article I, Section 21 of the Maine Constitution. Those provisions mandate due process in the taking of private property for public use and the payment of just compensation for such takings. Additional standards for right of way actions appear in the ***Federal Uniform Act***, 42 ***United States Code*** Chapter 61, and in Title 23 of the ***Maine Revised Statutes***. The ***Uniform Act*** applies to projects involving the use of Federal funds. All MDOT activities are subject to Maine State law.

The significance of right of way concerns in the delivery of transportation programs is demonstrated further by the inclusion of these impacts within the scope of analysis required under the ***National Environmental Policy Act (NEPA)***, 42 ***United States Code*** Sections 4321-4347 and implementing regulations, 23 ***Code of Federal Regulations*** Part 771 (USDOT) and 40 ***Code of Federal Regulations*** Part 1508, for any project involving a major Federal action. Federal funding of transportation projects, as well as most Federal permits for projects, are considered major Federal actions triggering application of ***NEPA*** (see 40 ***Code of Federal Regulations*** Section 1508.18).

It is important to keep in mind that, for most transportation projects, the Department must acquire the necessary property interests and complete relocation activities before the project can be put out to bid for construction. This places right of way activities on the critical path for MDOT project delivery. As MDOT team members handle project budget and schedule issues, they must insure that the projects will comply with the substantive and procedural requirements of Federal and State law. In addition, they must keep in mind MDOT's obligations of equity and good-faith dealing with affected property owners and tenants. Primary responsibility for meeting these mandates lies with the Department team members responsible for the right of way activities.

1-1.03(c) Right of Way Role in Planning

Transportation projects typically originate through planning proceedings within the MDOT Bureau of Planning. Other frequent sources of projects include MDOT's Office of Passenger Transportation (OPT), Office of Freight Transportation (OFT) and Office of the Commissioner of Transportation.

Right of Way Operations team members act as advisors to the Bureau of Planning for both near-term and long-term transportation planning activities. The Bureau of Planning is responsible for the identification of needed transportation projects across the State. It prepares a 20-year plan that takes a comprehensive look at Statewide transportation needs, goals and objectives. The Bureau of Planning also prepares the project-specific Biennial Transportation Improvement Program (BTIP), which MDOT submits to the Maine Legislature for funding every 2 years. Right of Way Operations team members help the Bureau of Planning identify potential major impacts on people and property and advise the Bureau of Planning on early location and design decisions. For upcoming BTIP proposals, the Right of Way Operations team member comprises one part of the multidisciplinary team that field checks projects and makes recommendations on project modification, inclusion or exclusion. The Bureau of Planning often requests right of way studies, including preliminary cost estimates, for particular programs or projects. Right of Way Operations team members provide similar services to other entities (e.g., Office of Freight Transportation), as they plan and execute projects within their areas of expertise.

1-1.03(d) Right of Way Role in Project Development

Most projects move to Project Development for detailed design, project approvals and permits, right of way acquisition, and construction. Right of Way Operations team members are a part of the multidisciplinary team that assumes responsibility for each project as it enters the project development phase. Right of Way Operations team members work with other Project Team Members to identify and understand right of way impacts, as well as to prepare schedules and budgets that incorporate the necessary right of way activities. Those activities include the following:

1. Research to gather information on existing conditions in the area of the proposed project. The type of information obtained includes existing highway layouts,

- apparent owners' names and addresses, boundaries of adjacent properties and the location of existing improvements on adjacent land (e.g., houses, septic systems, wells). See Chapter 2 for guidance on right of way mapping.
2. Mapping of existing right of way limits and proposed right of way limits, and determining the type and physical extent of property interests needed for the project. This information is included in the preliminary and final design plans. The right of way plans are the information base used for the preparation of acquisition documents including deeds, easements and notices of condemnation. See Chapter 2 for guidance on right of way mapping.
 3. Valuation of property interests the Department will acquire for the project. This process determines just compensation for the property, which is required by both State (Maine Constitution Article 1, Section 21, and Title 23 **Maine Revised Statutes** Section 155) and Federal law (see Fifth Amendment to the US Constitution and 49 **Code of Federal Regulations** Section 24.102). Right of Way personnel use a variety of procedures to value property interests, depending on the nature of the property interests MDOT intends to acquire. See Chapters 3 and 4 for guidance on valuation.
 4. Negotiation to acquire property based on the determined just compensation. Negotiators for the Department are required by law to follow certain procedures relating to the timing and content of offers and other negotiation activities in order to protect property owners. See Chapters 3 and 5 for guidance on acquisitions.
 5. Relocation of property owners and tenants may occur in cases where the impacts of the project require the acquisition of a residence or business location. For example, in negotiation for the purchase of underlying real property, there are specific legal requirements pertaining to notice, determination of compensation and other aspects of the relocation process. The Right of Way Operations relocation specialist works closely with the affected individuals. For residential relocations, MDOT must insure that the replacement housing is decent, safe and sanitary. For both residential and business relocatees, the goal is to make their move to a new location as financially neutral and trouble-free as is reasonably practical. See Chapter 6 for guidance on relocation.
 6. Management of property acquired by the Department for transportation projects. Most often, this is a short-term activity that focuses on issues such as asbestos inspection and abatement, and also the demolition of existing structures. In some cases, management of a particular property may extend over a number of years. Where appropriate, Right of Way Operations team members may elect to rent property until a project begins. Right of Way Operations team members also handle the sale of excess property. See Chapter 7 for guidance on property management.
 7. Administrative services required in support of Right of Way activities. Critical administrative functions include the preparation of notices to property owners,

requisitioning of checks for acquisition and relocation payments, and management of records and data relating to right of way activities on projects.

Right of Way Operations team members also provide technical assistance and support to local public agencies (LPAs) (e.g., municipalities that are carrying out project development activities funded by MDOT). The role of the Right of Way Operations team member in these cases is to help insure the LPA understands the right of way requirements for its project and that it submits the required right of way certification for the project. However, LPAs remain responsible to MDOT for compliance with applicable laws and regulations. See Chapter 8 for guidance on right of way and local public agencies.

1-1.03(e) Right of Way Role in Maintenance and Operations

Once Project Development completes a project, responsibility for it is transferred to the Maintenance and Operations (M&O) Division in which it is located. The 7 M&O Divisions hold broad responsibility for managing and maintaining transportation facilities within their geographic area. M&O maintenance projects on existing facilities occasionally require the acquisition of additional property rights. Those acquisitions must comply with MDOT's acquisition criteria. Other M&O activities that generate a need for Right of Way assistance include the management of transportation property to keep it free of encroachments, the settlement of well claims and the control of unlawful activities within the right of way. Right of Way Operations team members provide M&O with assistance on these tasks on an "as-needed" basis.

1-1.04 Administrative Structure and Operations

1-1.04(a) Overview of Bureau of Project Development

Project Development holds primary responsibility for the design and construction of transportation projects. Its organizational structure, shown in Figure 1-1, is based on programs and project teams. The objective is to provide each MDOT program with control of all of the functional skills and resources needed to develop and deliver transportation projects. The programs in Project Development, and the types of projects they handle, include:

1. Urban and Arterial Highway Program (Urban/Arterial). Interstate, urban and rural arterial highway projects.
2. Urban and Federal Bridge Program (Bridge). All bridge and most other structure projects.
3. Multimodal Program (Multimodal). Rail, air, bike, pedestrian and marine projects.
4. Regional Program (Regional). Collector Highway Improvement Program (CHIP), Hot Maintenance Mulch (HMM), Collector Improvement Program (CIP), Rural Road Initiative Program (RRIP) and Strut projects.

These programs report to the Assistant Director of Project Development. The Director of Project Development oversees overall Bureau operations. That position is responsible for Bureau policy, administration and management.

1-1.04(b) Right of Way Role in Project Teams

Project Development's program-based organization, adopted in 2000, emphasizes the placement of technical skills at the project level. Team members assigned to the project teams provide the right of way function. The composition and organizational structure of right of way services in each program are described below.

Urban & Arterial Highway and Urban & Federal Bridge Programs

The Urban/Arterial and Bridge programs each have 4 teams. These Teams have permanent members from various disciplines who are responsible for projects within specified geographic areas that are based on MDOT's Maintenance Divisions. Each Team in these 2 programs has functional resources covering Right of Way Negotiations, Appraisal and Mapping. When the Teams need relocation or property management services, they may request them from the Relocation Services Manager and the Transportation Property Specialist. Right of Way Operations team members on the Teams report to the Team's Project Manager for prioritization of work assignments and for guidance on matters relating to project scope, schedule, budget and project resources. Right of Way Support Managers, located in the Team Support Services areas of Urban/Arterial and Bridge, provide Team members with technical guidance on right of way matters. Those Managers, along with the Right of Way Policy Committee, are responsible for the technical proficiency of Right of Way Operations team members. Both Project Managers and Right of Way Support Managers report to the Program Manager on project and program delivery matters. Urban/Arterial and Bridge Program Managers hold overall responsibility for the performance of their programs.

Most of the projects handled by Urban/Arterial and Bridge Programs are Federally funded. New alignment projects are likely to have the most significant potential impacts. However, reconstruction and widening projects also can cause significant right of way impacts, including relocations. This means that personnel who perform right of way activities for these programs must have a full understanding of applicable State and Federal requirements.

Multimodal Program

Multimodal Program is responsible for projects that primarily involve transportation modes other than highways. The smaller number of projects handled by Multimodal Program, together with the highly specialized nature of the services Multimodal Program often requires, dictates that the program select Project Team Members on a case-by-case basis. The Project Managers in the Multimodal Program request needed right of way services from the Assistant Director, Bureau of Project Development. The Assistant Director will coordinate requests with the Program Managers to provide assistance. Multimodal projects often are not Federally funded, but usually do involve Federal permits. Multimodal projects frequently present unusual

characteristics, such as cooperative and joint-ownership ventures and the acquisition of heavy industrial sites or infrastructure. This necessitates particularly careful consideration of the right of way, **NEPA**, hazardous waste and other issues in the development of the projects.

Regional Program

The work of Regional Program reflects the administrative decentralization of a growing segment of MDOT's highway work. Regional Program handles projects that have a limited scope, lend themselves to less detailed project development processes and can be administered from their local Maintenance Division offices. Regional Program specializes in fast-track projects requiring less design, survey, environmental and right of way work than the projects under the jurisdiction of Urban/Arterial Program, Bridge Program and Multimodal Program. Right of Way Operations team members working in the Regional Program may be located in the Maintenance Division offices. Right of Way Operations team members assignments to the Regional Program's offices vary by need, but typically include a Right of Way Agent or Appraiser and a Right of Way Mapper. Regional Program obtains relocation and property management services from the Relocation Services Manager and the Transportation Property Specialist when these services are needed. The Regional Program administrative structure is similar to that for the Urban/Arterial and Bridge Programs. Right of Way Operations team members in the Divisions may report to the Project Manager assigned to the Division for project and administrative issues, or they may report to the Right of Way Support Manager, located in Augusta. The Right of Way Support Manager delivers technical support from a Team Support Services unit located in the Regional Program Office at MDOT Headquarters in Augusta.

Regional's projects reflect a mix of funding, environmental effects and right of way needs. This requires a case-by-case evaluation of appropriate right of way procedures.

1-1.04(c) Program Support Services – R/W Mapping Support and Research Units

R/W Mapping Support and Research is a part of the Program Support Services Unit. There are two main right of way service areas in this unit. Right of Way Mapping (Mapping) prepares acquisition documents, including parcel descriptions, for MDOT condemnation actions, reviews Right of Way plans for conformity and completeness, records completed right of way plans and leads the policy setting for Right of Way mapping standards. Right of Way Research (Research) fields public requests for information about highway boundaries and ownership details relating to completed and pending MDOT projects, and requests for historic data on highways around the State. The Mapping and Research function is described in Chapter 2.

1-1.04(d) Right of Way Job Classifications

For Right of Way positions, the Department uses job classifications that encompass right of way and general real estate knowledge, skills and abilities. The specifications are guidelines and are not all-inclusive of the knowledge, skills, and abilities involved in right of way work, or the duties that MDOT may assign to an employee in a given classification.

The following job classifications are typically used for Right of Way Operations team members:

1. Right of Way Agent (I, II). Primary responsibilities include negotiations with property owners and administrative acquisitions.
2. Right of Way Appraiser (I, II, III). Primary responsibilities include the valuation of property, including appraisals and review of appraisals. Also negotiates with property owners and represents the Department in compensation hearings before the State Claims Commission and the Maine Superior Court.
3. Transportation Property Specialist. Manages property acquired by MDOT for projects, including safety and demolitions issues, leasing and the sale of excess property.
4. Relocation Specialist. Works with residential and business owners and tenants to relocate them off the project site. This position is responsible for determining relocation benefits and ensuring MDOT compliance with notice and other procedural requirements relating to relocation.
5. Transportation Aide, Assistant Technician, Technician, and Senior Technician. Primary responsibilities include gathering property information, preparing Right of Way Plans for MDOT projects, maintaining public records pertaining to the highway rights of way, responding to public requests for information about rights of way, property negotiations, administrative acquisitions, utility coordination and management.
6. Right of Way Support Manager. Acts as Technical Manager for Right of Way Operations team members in the Programs and serves as a technical resource to assist Right of Way Operations team members in the performance of their jobs. Includes Property Services Manager, Chief of Right of Way Operations and Supervisor of Mapping and Research. Reports to Program Managers on project delivery and Right of Way Operations team member performance issues and is supervised by a Program Manager.

1-1.04(e) Project Development Work Flow and the Team Process

When projects move from the Bureau of Planning to Project Development, the Bureau of Planning forwards informational reports to Project Development. These reports serve as the starting point for Project Development's work. The Bureau uses a multidisciplinary Team approach to the project development process. Project Managers head each Team and hold the primary responsibility for performance and project delivery. Technical disciplines represented on the Teams include right of way valuation and acquisition, design, survey, mapping, geotechnical, utilities, construction, environmental and technical support. Team activities include research and data gathering, determination of project scope, engineering design, determination of right of way and environmental impacts, right of way and design plan

preparation, right of way relocation and acquisition, public participation and local coordination, utility and railroad coordination, permitting and other project approvals, budget and schedule management, maintenance of project data in the ProjEx Information Management System, and construction.

1-1.04(f) Integration of the Right of Way Function into Project Development Process

One goal of the Project Development Team process is to achieve integration of all necessary disciplines and considerations into the management and decision-making for a project. This is especially critical for right of way functions because of the interdependencies among project scope and design, project budget and schedule, and right of way acquisition and relocation activities. The integration of right of way activities at MDOT is accomplished through the use of Project Team Members qualified to handle preliminary and final right of way mapping, negotiations, property valuation and property acquisition documentation. Mapping activities are handled by Right of Way Mapping Team Members, while the remaining right of way activities are carried out by Right of Way Operations Team Members. Relocation and property management services are available to the Teams upon request from Relocation Services Manager and the Transportation Property Specialist.

Right of way activities are interwoven throughout the project development process. Major right of way activities, in the approximate order of occurrence on a project, include:

1. Participation in Team meetings and site visits;
2. Preparation of the names and addresses mailing list;
3. Gathering of data for the valuation of affected properties;
4. Completion of Property Owner Reports;
5. Participation in a preliminary public meeting, as needed;
6. Review of proposed alignment for highway projects;
7. Plotting existing right of way on Plans;
8. Preparation of requests for title abstracts on affected properties;
9. Preparation of estimates of project acquisition costs;
10. Determination of relocation needs and preparation of a preliminary Relocation Plan and estimates (including sign relocations);
11. Contact of affected property owners and tenants;

12. Review of a preliminary Design Plan;
13. Review of Approach Plans for bridge projects;
14. Review and acceptance of Design Plans Impacts Complete;
15. Preparation of final Right of Way Plans;
16. Valuation of property rights to be acquired for the project;
17. Negotiation with affected property owners and tenants for project acquisition and relocation;
18. Acquisition of necessary property rights, by voluntary transaction or condemnation through recording of the condemnation or document;
19. Completion of relocations;
20. Completion of a Right of Way Certificate for the project, specifying that MDOT has acquired all property rights necessary for the project (the Certificate becomes a part of the Plans, Specifications and Estimates (PS&E) Package that is used for project bidding and construction);
21. Identification and execution of property management activities required pending project construction (e.g., rental, rodent control, asbestos inspection and abatement);
22. Resolution of unsettled claims for acquisition and relocation compensation through negotiation, State Claims Commission proceedings or judicial proceedings; and
23. Recording of the Right of Way Plans.

Later parts of this *Manual* discuss these activities in greater detail.

1-1.04(g) Legal Mandates Affecting Right of Way Activities

Right of way activities, more than any other aspect of project development, are controlled by State and Federal laws and regulations. Personnel performing right of way functions must be constantly alert to the content of those laws and regulations, and to the appropriate interpretations of them in the field. Right of Way Support Managers and the FHWA Maine Division Right of Way Officer can provide guidance to Right of Way Operations team members.

The following Sections of Title 23 ***Maine Revised Statutes Annotated (MSRA)*** apply to Right of Way operations:

1. Section 61 – Vacation, Sale or Lease of Acquired Land.

2. Section 63 – Records of Right of Way Division Confidential.
3. Section 73 – Sensible Transportation Policy Act.
4. Sections 151 to 161 – State Claims Commission.
5. Sections 241 to 247 – Relocation Assistance.
6. Sections 301 to 307 – Controlled Access Highways.
7. Sections 651 to 654 – Laying Out, Altering and Discontinuing Highways.
8. Section 2952 – Longtime Buildings and Fences as Bounds – Etoppel.
9. Sections 3001 to 3035 – Acquisition of Property for Highway Purposes (Towns).

The primary Federal laws pertaining to Right of Way are in Title 23 and Title 49 of the **U.S. Code (USC)**. The **USC** is implemented through regulations published in the **Code of Federal Regulations (CFR)**. Right of Way Acquisition is addressed in 23 **CFR** Part 710. Relocation is addressed in 49 **CFR** Part 24.

The full text of the above **MSRA** and **CFR** references is in Appendices A and B. The content of this *Manual* fully complies with the State and Federal law and regulations. Right of Way Operations team members should secure interpretations of the law and regulations from the Right of Way Support Manager when unique or complex situations are encountered that are not addressed in this *Manual*.

1-1.05 Integration of Right of Way Functions with Functions of Other Organizational Units

1-1.05(a) Office of Legal Services

The Office of Legal Services (Legal Services) plays a major role in the execution of right of way functions. Successful MDOT operations require close cooperation and consultation among Legal Services and Right of Way Operations team members.

Legal Services performs a range of property title services to identify the owners of property to be acquired for projects. These include a preliminary investigation to secure deed descriptions used by Mapping, “acquisition-to-date” title searches for all properties expected to have either permanent or temporary rights acquired for a project, and a full 40-year title for significant acquisitions (including all full-fee acquisitions). Legal Services delivers to Right of Way Operations team members a list of the property owners and other parties of interest to whom MDOT must give notice in any condemnation action for a project. Legal Services verifies ownership and parties of interest immediately before a condemnation. Legal Services also does a final title check before it records title transfer documents in the appropriate Registry of Deeds. Once the recording of the condemnation is complete, Legal Services delivers to the Right of Way Operations Team Member a notification that MDOT has acquired good and sufficient title to the property in question.

Legal Services also performs research on a wide variety of legal issues that arise in the course of a project and that affect right of way work. Typical matters include determining the legal status of a highway layout, the interpretation of property boundaries, the legal status of structures, property ownership and proper payees for acquired property affected by multiple liens or mortgages.

Legal Services and Right of Way Operations team members work together to handle unsettled compensation claims for property that is acquired for projects. Whenever compensation for an acquisition remains unsettled 60 days after the condemnation date, the case is automatically referred to the State Claims Commission, which is an administrative hearing body that offers affected parties a chance for a neutral review of their claim. Once a case is referred to the State Claims Commission, the opportunity for an administrative settlement by Right of Way Operations team members is reduced, and Legal Services assumes responsibility for negotiation and settlement. Close coordination continues between Legal Services and Right of Way Operations team members during this process, especially with the Right of Way Operations Team Member and the relevant Right of Way Support Manager. Right of Way Operations team members often serve as witnesses and as informal resources during the proceedings. Legal Services seeks a Right of Way review and recommendation on any proposed legal settlement. If a case continues to the Maine Superior Court after completion of State Claims Commission proceedings, Legal Services retains responsibility for the matter. Coordination with Right of Way, and Right of Way assistance to Legal Services, continue in a manner similar to that during the State Claims Commission phase.

Non-compensation claims also may arise during the project development process. Right of Way Operations team members and Legal Services staff work in close coordination whenever claims appear to present a threat of litigation. The extent of Legal Services involvement is established cooperatively on a case-by-case basis up to the time that a lawsuit actually is filed. Once a court case starts, Legal Services assumes responsibility for managing the case, including creating strategy and conducting negotiations. Throughout the litigation process, Legal Services and Right of Way personnel continue to coordinate closely with each other. Legal Services works on these cases primarily with the Right of Way Operations Team Member and with the appropriate Right of Way Support Manager.

In special cases, Legal Services may handle all negotiations and documentation for the acquisition of property. This typically occurs on projects that involve highly controversial acquisitions, projects with unusual schedule requirements or special-purpose projects that require the acquisition of a small number of significant parcels. In these cases, Right of Way Operations team members serve as a resource to Legal Services.

1-1.05(b) Environmental Office

A mutually supportive relationship exists between the right of way process and environmental activities. The Environmental Office is responsible for determining the human and natural resource impacts of proposed MDOT activities and for securing necessary environmental permits and approvals. This creates several interdependencies between the Environmental

Office and the Right of Way process. The analysis of human environmental impacts by the Environmental Office includes consideration of right of way impacts, especially the effects of displacement caused by acquisition of homes and businesses. Natural resource impact determinations rely heavily on a consideration of the boundaries of proposed acquisitions, as determined and mapped by Right of Way mappers. Documentation requirements and resulting scheduling requirements vary with the nature and extent of the potential project impacts. Completion of the **NEPA (National Environmental Policies Act)** review and documentation process is a prerequisite for beginning the negotiation phase of right of way acquisition. Delays in either environmental or right of way functions can have an enormous effect on project delivery. Good communication and coordination between the Environmental Office and Right of Way personnel from the beginning to the end of a project is critical to its success.

1-1.05(c) Other Multi-Unit Activities

Right of Way Operations team members perform a number of other activities that require coordination across unit boundaries. These include the review of private developer's projects involving changes to transportation facilities and the management of access to highways.

Developer project reviews are managed by the MDOT Traffic Section. This unit refers developer proposals to Right of Way Mapping for evaluation of the right of way impacts of the proposed design, the accuracy of the right of way layout, the scope of acquisition requirements and the completeness of acquisition documents. Based on its review, Right of Way Mapping makes a recommendation to the Traffic Section. The recommendation may be to approve, approve with conditions or reject the proposal. If a developer project moves forward, the Right of Way Support Manager will specify the appropriate acquisition process. A more detailed explanation of the developer review process appears in Chapter 2.

Management of access to highways from adjacent properties and roadways is the responsibility of the Traffic Section. Right of Way Mapping and the Property Manager in the Urban/Arterial Program provide support on right of way issues. Their assistance typically includes property ownership information, right of way layouts, and preparation of acquisition and disposition documents. Right of Way Operations team members also provide assistance with valuation and negotiation as needed.

1-2 DECISION-MAKING FOR RIGHT OF WAY ACTIVITIES

1-2.01 Goals and Policies

MDOT has a legal and social obligation to insure that individuals affected by the construction, operation and maintenance of transportation facilities are treated consistently and equitably. Property owners, tenants and business owners are entitled to protections, benefits and advisory assistance, as discussed in detail in Chapters 3 through 6. Applicable due process requirements include notice to a party from whom property will be acquired, payment of just compensation for property rights acquired by MDOT, and assistance in locating replacement housing and business sites. The goal for Right of Way Operations team members is to find ways to meet MDOT project needs while fully complying with property owner protections. This dual responsibility is reflected in the Right of Way mission, which is “to establish, deliver, and manage property interests in support of Maine’s transportation infrastructure in a consistent, timely, and equitable manner, in accordance with state and federal laws.”

1-2.02 Major Decision Points

1-2.02(a) Right of Way Milestones

As the right of way process unfolds, there are a number of major decision points that significantly affect the course of a project. Table 1-2, on the following page, shows major right of way decision points, the decision makers and the related project development process steps.

TABLE 1-2 — RIGHT OF WAY MILESTONES

Right of Way Milestone	Decision Maker(s)	Related Project Development Process Step
Approve initial right of way estimate for project (First Phase Right of Way)	Right of Way Support Manager and Right of Way Operations Team Member	Project Kick-off
Set scope of initial property title and valuation work	Right of Way Support Manager	Project Kick-off
Complete initial relocation plan and estimate	Right of Way Relocation Specialist and Right of Way Support Manager	
Approve final right of way estimate	Right of Way Support Manager	Preliminary Design Report and Preliminary Project Plans
Approve final relocation plan and estimate	Right of Way Support Manager	
Approve appraisal process level for affected parcels	Right of Way Support Manager	Preliminary Design Report and Preliminary Project Plans
Review valuation process decision for required modifications	Right of Way Operations Team Member and Right of Way Support Manager	Plan Impacts Complete
Approve final right of way plans	Right of Way Mapping and Research	
Determine "Fair Market Value"	Assigned Right of Way Operations Team Member, or Review Appraiser	
Authorize initiation of acquisition negotiations (Second Phase Right of Way)	Right of Way Support Manager	NEPA Review Complete
Decide to seek administrative settlement in excess of just compensation	Right of Way Operations Team Member up to limits of financial authority, then Right of Way Support Manager, then Acquisition Review Committee	Prior to or after Right of Way Certification
Determine need for condemnation	Right of Way Support Manager	
Certify that all necessary property rights for the project have been acquired (Right of Way Certification)	Right of Way Support Manager	Right of Way Certification
Refer unsettled property claims to SCC	Required by law after 60 days	
Review proposed legal settlements and make recommendations	Right of Way Support Manager in consultation with Right of Way Operations Team Member	

1-2.02(b) Right of Way Certification

As a prerequisite to advertising a federally funded project for physical construction, MDOT must certify the relocation and acquisition status of property need for the project. The Right of Way Certificate, Form AD-3, is used for this purpose. The Certificate is required by 23 **CFR** 635.309(b), (c), (g), and (h). The project Right of Way Certificate must be executed by the Program Manager, and delivered with the Plans, Specifications & Estimates (PS & E) to the Contracts Unit before the project can be advertised for construction bids.

As a prerequisite to authorizing advertisement for construction, the Right of Way Certificate will reflect a fact situation as indicated in 1, 2, or 3 below:

1. All necessary rights-of-way, including legal and physical possession and control of access rights, have been acquired. State Claims Commission actions, or Superior Court appeals may be pending, but MDOT has obtained title and legal possession to all property. There may be some improvements remaining on the right-of-way, but all occupants have vacated the lands and improvements. The great majority of projects authorized for advertisement by MDOT will be in this category.
2. Although all necessary rights of way have not been fully acquired, MDOT has obtained the right to occupy and use all rights-of-way required for the project. Appeal of some parcels may be pending in a Superior Court, or rights of entry may have been obtained on some parcels. The occupants of all lands and improvements have vacated. Under these circumstances MDOT will secure FHWA concurrence before advertising a project for construction.
3. The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of residences on such parcels have had replacement housing made available to them in accordance with Chapter 6-1.03 of this *Manual* and 49 **CFR** 24.204 (Availability Of Comparable Replacement Dwelling Before Displacement). MDOT must request prior concurrence from FHWA to advertise a project on this basis.

Advertisement for bids or force-account work may be authorized only if FHWA concurs with MDOT in advance that it will be a significant public benefit. Requests will be made only in very unusual circumstances so that exceptions will not become the rule. The MDOT request to FHWA for concurrence will include full explanation of circumstances, and reasons why the advertisement is a significant public benefit. The request to FHWA will identify each occupied parcel, and will include a realistic date when physical occupancy and use is anticipated and a work plan for delivering the parcel by the specified date. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained. The physical construction may proceed, but MDOT will ensure, by appropriate contract restrictions, that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right-of-way are protected against inconvenience, injury or any action coercive in nature.

A project will not be advertised for construction if the status of right of way is not as described under 1, 2 or 3 above.

If a project is authorized for advertisement and construction with a Right of Way Certificate conditioned as in 2 or 3 above, MDOT will issue a revised Certificate when occupied parcels are vacated and full legal possession of all properties is complete. The revised certificate will be provided to FHWA, and to the Project Manager for purpose of removing any restrictions on the contractor with regard to property.

1-2.02(c) Signatory and Financial Authority

The Department's Administrative Procedures Memorandum No. 10 (APM 10) establishes the authority of MDOT staff to sign documents and commit the State of Maine to expenditures. Provisions relevant to the Right of Way process primarily relate to the authority to make binding offers to property owners and tenants, to execute a Right of Way Certificate and to enter into contracts for consultant services. For applicable limits, consult the current Administrative Procedures Memorandum No. 10.

1-2.02(d) FHWA/MDOT Oversight Agreement

Under the provisions of Section 1305 of the *Transportation Equity Act for the 21st Century of 1998* (TEA-21), States can assume responsibility for a broad range of **USC** Title 23 functions that were formerly overseen and approved by FHWA. The FHWA/MDOT Agreement for the Partnering and Shared Oversight of Federal Aid Projects (May 1999) defines shared responsibility in Maine. The management of project right of way certifications is identified as an MDOT responsibility.

Under the Oversight Agreement, lead project units primarily are responsible for compliance with applicable legal requirements. In the case of certification, Project Development is the responsible party for projects in the Urban/Arterial, Bridge, Multimodal and Regional Programs. Compliance with the Federal laws and regulations is delegated to Project Managers and Right of Way Support Managers.

The shared oversight pertains only to activities under US Code Title 23. Right of way activities performed pursuant to other US Code titles remain under Federal approval and oversight. This includes all relocation activities (US Code Title 49). All **NEPA** approvals also remain with FHWA. The Oversight Agreement does not alter requirements for FHWA approvals on MDOT non-project activities. This affects several property management activities including modification in the degree of access control, and disposal of property acquired for Interstate highways.

The Oversight Agreement establishes 2 categories of projects — exempt and direct involvement. Exempt projects for which MDOT assumed the highest level of responsibility are:

1. Interstate projects that are resurfacing, restoration or rehabilitation projects, or are new construction and reconstruction projects with estimated construction values of less than \$1,000,000;
2. Non-interstate National Highway System (NHS) projects, designated in MDOT's programs as "E" projects; and
3. Non-NHS projects, including non-highway projects designated as "X" projects.

Direct involvement projects continue to have active FHWA participation through its membership on Project Teams. No direct FHWA approvals are required for direct involvement projects based on the premise that adequate oversight is exercised through FHWA involvement in the Project Team. Direct involvement projects include:

1. Interstate new construction or reconstruction projects with construction values of \$1,000,000 or more; and
2. Exempt projects selected by FHWA for direct involvement due to characteristics including cost, environmental sensitivity, new or unique engineering features, unusual or innovative project procedures, national or international significance, or the opportunity for application of FHWA technical or procedural expertise.

1-3 QUALITY ASSURANCE/QUALITY CONTROL

MDOT strives for quality in all of its products and services. MDOT management and project personnel, along with the public as consumers of MDOT products and services, share responsibility for quality. Quality assurance rests with those persons performing services or creating products. It reflects their obligation to perform their jobs well. Quality control, on the other hand, is a management oversight responsibility. It is management's duty to monitor, evaluate and modify work performance and processes to insure that MDOT achieves its desired quality goals.

All MDOT employees and consultants performing right of way activities are expected to understand the quality assurance standards applicable to their tasks and to strive to meet them. They must work with management to coordinate quality assurance and quality control efforts. Each functional chapter in this *Manual* contains information on the quality assurance expectations for that function. Additionally, there is a separate Quality Assurance/Quality Control Chapter, Chapter Ten that summarizes functional quality assurance standards and describes in detail the quality control responsibilities of Right of Way management.

1-4 PUBLIC INFORMATION AND PUBLIC INVOLVEMENT

1-4.01 Confidentiality of Right of Way Records and Data

The general policy of the State of Maine is that the Government will conduct its proceedings openly and will make its records available for public inspection (1 **MRSA** Section 401). The definition of public records contained in 1 **MRSA** Section 402(3) is quite broad and includes most MDOT records. However, the Maine Legislature created a specific and limited exception to the open records law for right of way in 23 **MRSA** Section 63. Under that statute, right of way records and correspondence relating to negotiations and appraisals of property are confidential until the earlier of the following 2 events:

1. Final settlement of all parcels on the project to which the records and correspondence relate; or
2. Nine months after the completion date of the project according to the records of MDOT.

Records for claims appealed to Superior Court remain closed to public inspection until after the award of the court.

1-4.02 Right of Way Role in Public Involvement Activities

Experience has shown that good communication between MDOT and the public is the best means for insuring that transportation activities satisfy public needs while avoiding and minimizing unnecessary harm to persons, property and natural resources. MDOT's public involvement objective is to achieve 2-way communication. Information should flow from MDOT to people who are interested in or affected by a proposed project, to help them understand the transportation needs, the choices for how to address those needs and the project development process that applies. The flow of communication to MDOT should include the interests and concerns of property owners and the public, the local conditions relevant to the design and operation of the facility, and the effectiveness of the process in fostering public knowledge and participation. MDOT tailors the structure of its public involvement process to the needs of each project and the applicable public involvement requirements under the **Sensible Transportation Policy Act** (23 **MRSA** Section 73(3)(G) and implementing regulations) and **NEPA**. In Project Development, design of the public involvement plan for a project is the responsibility of the Project Manager.

As the main link between MDOT and property owners and tenants, Right of Way Operations team members perform critical communication functions through both formal and informal methods. Formally, Right of Way Team members are a part of the public involvement process for MDOT projects. Depending on project needs, Right of Way may participate in the preliminary public meeting and other public information sessions held in the early stages of a project. At those meetings, Right of Way Operations team members explain the existing right of way layout and conditions. Typically, a plan sheet showing existing conditions is available for the meeting. Right of Way Operations team members also gather information from attendees

that contributes to the Department's knowledge of the project area. In some cases, Right of Way Operations team members may offer a brief summary of the right of way process. Perhaps most importantly, Right of Way Operations team members use these occasions to begin informally to build relationships with the local residents with whom they will negotiate as the project moves forward.

A formal public hearing typically occurs after the Project Team approves the preliminary Plans and Preliminary Design Report. For most projects, opportunity for public hearings is the action that meets public notice and comment requirements under the ***Sensible Transportation Policy Act*** and ***NEPA***. A transcript is made of the hearing. Full plans, showing existing and proposed conditions, are posted during the hearing. The formal role of Right of Way at the public hearing includes:

1. Explaining the right of way process, including a summary explanation of the rights of property owners and tenants affected by the project; and
2. Discussing the right of way impacts of the proposed project, including any alternatives under consideration.

Informally, the public hearing is another opportunity to gather information for the project and to enhance the channels of communication with local residents and officials.

Beyond these scheduled public involvement sessions, Right of Way Operations team members have repeated opportunities during their fieldwork for communication with local residents. Some of those contacts are a part of formal right of way procedures, but many are casual contacts as Right of Way gathers information needed for its work. It is important to appreciate the important role these contacts play in developing the relationships that will dictate the course of negotiations with affected property owners.

1-5 ACQUISITION, RELOCATION AND CONDEMNATION PAYMENTS

1-5.01 Payment Process

All claims for payment of property acquisition and relocation costs are processed through the Program Support Services Unit. Checks for property acquisition are generally delivered by certified mail, with return receipt requested.

Certain relocation payments are hand delivered by the project right of way staff person. Hand delivery is the preferred method for relocation replacement housing payments, as MDOT must assure that the claim amount is applied to the purchase cost of replacement housing. Checks for relatively minor amounts, such as for residential moving costs, may be sent to the claimant by ordinary first class mail.

Property owners should be personally advised that the check for property acquisition will include the names of all parties that have an interest in the property as shown on the title report. This will include co owners, and lien holders, including mortgagees. It is the property owner's responsibility to clear liens and secure lien holder signatures on the State check.

Lost or missing checks may be replaced. The project staff member who is advised of a missing check should report this to the Program Support Services Unit. The owner, or other claimant will be required to sign an affidavit attesting that a check is lost or missing. A replacement check will be issued after checking with the State Treasury to assure that the check has not been paid, and to cancel payment on the missing check.

1-6 RECORDS MANAGEMENT

Each of the four highway programs maintains right of way records within the program project files. The Program Directors are responsible for the organization, security and storage of files. Operational personnel who create and use file documents are expected to exercise discretion and care as reflected in the following guidelines:

1. Place original documents only (not multiple or duplicate copies) in the project file.
2. Minimize removal of original documents from MDOT offices. Use photocopies or written notes if information from documents is needed for reference outside the office.
3. Record personal or financial information only if is relevant to the program purpose for which a record is kept.
4. Make sure that official forms are completed and blank spaces are lined out before finalizing forms and other official documents.
5. Consult a Right of Way Support Manager or Project Manager before releasing information from MDOT files to any person. MDOT right of way documents contain personal and financial information that is protected from public disclosure.

Title 1 **MRSA** Sections 402 and 408 control disclosure of State records for public inspection. Disclosure of right of way records is further controlled by 23 **MRSA** 63. Right of way staff that originate or control official records, including appraisals, negotiation diaries, property owner reports, cost estimates and relocation benefit determinations, should be familiar with these statutes.

MDOT is transitioning to storage of permanent records on electronic media. This will involve optically scanning archived records, and current files as they are closed. Instructions will be developed on this process, and on retrieval of records from the Departmental database.

